



**IN THE MATTER OF THE INJURY OF A MALE
WHILE BEING APPREHENDED BY MEMBERS OF THE RCMP
IN PENTICTON, BRITISH COLUMBIA
ON MAY 16, 2023**

**DECISION OF THE CHIEF CIVILIAN DIRECTOR
OF THE INDEPENDENT INVESTIGATIONS OFFICE**

Chief Civilian Director:	Ronald J. MacDonald, KC
IIO File Number:	2023-127
<u>Date of Release:</u>	<u>November 15, 2023</u>

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INTRODUCTION

On May 15, 2023, RCMP members were surveilling the occupants of a stolen pickup truck, which travelled from Kelowna to Penticton. In the early morning hours of May 16, the pickup stopped and two male occupants walked away from it. They were arrested with the assistance of a Police Service Dog ('PSD') and one of them, the Affected Person ('AP'), was injured. The Independent Investigations Office ('IIO') was notified and commenced an investigation. The narrative that follows is based on evidence collected and analyzed during the investigation, including the following:

- statements of a civilian witness and three witness police officers;
- police Computer-Aided Dispatch ('CAD') and Police Records Information Management Environment ('PRIME') records;
- audio recordings of police radio transmissions;
- records of Whatsapp chat exchanges between involved police officers;
- police vehicle data downloads;
- dash camera video recordings from three police vehicles (none of which, unfortunately, showed the arrest itself);
- scene photographs; and
- medical evidence.

The IIO does not compel officers who are the subject of an investigation to submit their notes, reports and data. In this case, the Subject Officer has declined to provide any evidence to the IIO, or to Crown counsel tasked with prosecuting the occupants of the stolen pickup truck.

NARRATIVE

At about 9:00 p.m. on May 15, 2023, members of a plain-clothes RCMP 'Target Team' located a stolen pickup truck in Kelowna. The male driving the pickup was recognized as an individual known to police as a prolific offender. He was understood to have used stolen vehicles to ram police vehicles in the past to evade capture. Officers noted two other occupants in the truck (it was subsequently determined that there were four in total, including AP and two females).

As the officers covertly followed the stolen truck, they requested a dog handler to join them (the dog handler subsequently became the Subject Officer in this investigation). The pickup truck drove to Penticton, and the occupants were engaging in what the officers judged to be suspicious behaviour, driving slowly around apparently looking for opportunities to commit property crimes. Shortly after 3:00 a.m. on the morning of May 16, the officers saw the occupants evidently engaged in stealing gasoline by syphoning.

At about 3:50 a.m., the pickup truck stopped on a dark road beside Penticton Airport, and two males walked away from it, southbound. Two females remained with the truck. When the two males were about 300 to 400 metres from the parked truck, police observing them judged it safe to move in and apprehend them, because it was now going to be difficult for the males to get back to the pickup truck and use it for the purpose of escape.

Three police vehicles, emergency lights activated, pulled in around the two suspects. Witness Officer 1 ('WO1') stopped his vehicle to the north of the pair. WO1 later told IIO investigators that when he exited his vehicle and ran around it to confront the suspects, one of them had already disappeared (he had evidently managed to pass between the police vehicle and the airport fence, and was subsequently tracked and arrested, some distance away). Of the other male (AP), WO1 said,

...he's kind of shuffling to, to the gap and he, he got back up, and, and, and he's, he's still like – like I remember he, yeah, he got back up and he started like as, as if – yeah he started as if he was, he was leaving and I'm like, oh my gosh, this guy's running too.

WO2 used his police vehicle to block passage to the south, and immediately went after the first male, on foot. The Subject Officer ('SO') pulled in between the other two police vehicles and brought out his Police Service Dog ('PSD'). WO1 said that both he and SO were yelling commands at AP, telling him he was under arrest, but he saw AP initially turn as if to run:

...so this, this guy was turning to, to run and then I saw that the, the line went slack on, on the police dog. And so the guy kind of turned as that happened and realized that there was a dog coming at him now ... I remember he jumped down and, and he, he threw his, he threw his arm out in front of him and his left, his left arm was bit.

Seeing that AP was now controlled by the PSD, WO1 then left to go after the other male, who had climbed over the airport fence and was fleeing. Tracked by the PSD, the second male was later found hiding on residential property, and was arrested. Officers arrested the two females at the stolen pickup truck without incident.

A long set of bolt cutters were found and photographed at the arrest scene, and officers' evidence suggests that there were concerns, initially, that one of the suspects might be carrying a weapon.

AP suffered serious lacerations to his face and to his left forearm from dog bites. He was transported to hospital for treatment. He has not provided any account to the IIO.

LEGAL ISSUES AND CONCLUSION

The Independent Investigations Office of British Columbia has been given the task of investigating any incident that occurs in the province in which an Affected Person has died or suffered serious physical harm and there appears to be a connection to the actions (or sometimes inaction) of police. The aim is to provide assurance to the public that when the investigation is complete, they can trust the IIO's conclusions, because the investigation was conducted by an independent, unbiased, civilian-led agency.

In the majority of cases, those conclusions are presented in a public report such as this one, which completes the IIO's mandate by explaining to the public what happened in the incident and how the Affected Person came to suffer harm. Such reports are generally intended to enhance public confidence in the police and in the justice system as a whole through a transparent and impartial evaluation of the incident and the police role in it.

In a smaller number of cases, the evidence gathered may give the Chief Civilian Director ('CCD') reasonable grounds to believe that an officer has committed an offence in connection with the incident. In such a case, the *Police Act* gives the CCD authority to refer the file to Crown counsel for consideration of charges.

In a case such as this one, involving the use of force by an officer, one of the threads of the IIO investigation will be the gathering of evidence about potential justifications for that use of force. The CCD will then apply legal tests such as necessity, proportionality and reasonableness to reach conclusions as to whether the officer's actions were lawful, or whether he may have committed the offence of assault.

That decision is not an easy one in the circumstances of this case, but it can also fairly be said that those circumstances were not easy for the Subject Officer either. The incident occurred in a very dark place, making it difficult for officers to see the suspects, and there were concerns about the possible presence of weapons. Because one of the men had managed to evade the surrounding police vehicles and run into the darkness, the police team was divided, two officers chasing that suspect while WO1 and SO were left to apprehend AP.

The recollection of WO1 is that AP was apparently turning to follow his companion when the PSD was released, and then turned back and went down towards the ground, causing him to be bitten in the arm and face as the dog reached him. It was not unreasonable for SO to send the dog after a fleeing suspect, though it does appear that AP was given little opportunity to make it clear that he was surrendering, and there is no evidence that SO gave clear warnings about the dog, as is generally required by the *Provincial Policing Standards*.

On balance, this is not a case in which the actions of the Subject Officer were clearly unnecessary or unreasonable, and it cannot be said that the deployment of the PSD was a use of excessive force. That being so, as the Chief Civilian Director of the IIO, I do not consider that there are reasonable grounds to believe that an officer may have committed an offence under any enactment and therefore the matter will not be referred to Crown counsel for consideration of charges.



Martin Allen, General Counsel
for Ronald J. MacDonald, KC
Chief Civilian Director

November 15, 2023

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